



January 8, 2016

VIA ECF FILING

Honorable Charles R. Breyer
United States District Judge
Courtroom 6, 7th floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Application to Serve on Steering Committee: *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liab. Litig.*, No. 15-MD-2672 CRB

Dear Judge Breyer:

Pursuant to the Court's Pretrial Order No. 2, I, Kimberly A. Kralowec, respectfully apply for appointment to the Plaintiffs' Steering Committee(s) in the *Volkswagen* litigation. Specifically, I request appointment to the Steering Committee(s) for the particular purpose of advancing plaintiffs' interests in connection with: (1) their claims against the Porsche defendants; and/or (2) their federal antitrust claims.

Such an appointment is appropriate for the following reasons:

First, my client's case, *Hopkins v. Volkswagen AG et al.*, No. 3:15-cv-06244-CRB, is one of only two included actions to assert federal antitrust claims against Volkswagen, Audi and Porsche (the other was filed by Hausfeld LLP). It is also the first action filed in California (and the fourth nationwide) to assert claims against Porsche, and it remains the only complaint asserting *antitrust* claims against Porsche. My client, Larry Hopkins, is a Vietnam veteran who has expressed a strong interest in pursuing this litigation for the benefit of all affected consumers.

Second, to streamline the litigation process, the Court should appoint Steering Committee members whose assigned task is to focus on developing the claims against each of the defendant groups (Volkswagen, Audi, and Porsche). I respectfully propose that my firm is best suited to serve those functions as to the Porsche defendants, especially given the unique antitrust claims asserted against those defendants in my client's case.

Third, as detailed below and in the attached CV, I have more than twenty years of complex litigation experience, including extensive experience handling consumer fraud, breach of warranty, and antitrust class actions like this one. My firm, The Kralowec Law Group in San Francisco, handles plaintiff-side class actions almost exclusively. The firm is 100% woman-owned. I have been named by the *Daily Journal* as one of the Top 100 Women Lawyers in California, and I was honored with a *California Lawyer* Attorney of the Year ("CLAY") Award



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for my work in *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the landmark class action precedent in California, in which I served as lead appellate counsel for the plaintiff class.

Attorney Kathleen Styles Rogers, Of Counsel to my firm, has nearly thirty years of practice experience, including twenty years of experience handling complex class actions and several MDLs. Ms. Rogers was Of Counsel to the Furth Firm LLP and Glancy Binkow & Goldberg LLP before joining my firm. She also was a partner in a litigation boutique firm with former Congressman Paul N. "Pete" McCloskey, Jr., and she served as Senior Counsel to MCI Telecommunications, a major multi-national corporation, representing the company in consumer class litigation and regulatory actions. Ms. Rogers also has experience working on complex environmental matters, including the *Exxon Valdez* litigation and an action against pulp mills in the Pacific Northwest for violation of the Clean Water Act, brought by the Surfrider Foundation.

Professional Experience Handling This Type of Litigation. The *Volkswagen* cases assert two main types of claims: (1) consumer fraud and breach of warranty claims; and (2) antitrust claims. The attorneys in my firm have significant and unique experience in both of these areas of practice, including but not limited to the following cases:

(1) Consumer Fraud and Breach of Warranty Class Actions: *In re Apple iPhone/iPod Warranty Litig.*, Case No. 10-CV-01610 (N.D. Cal.) (counsel for nationwide class in consumer fraud and breach of warranty class action; settled for \$53 million; recognized by *Top Class Actions* as garnering the second-highest "class action settlement payments awarded to consumers in 2014"); *Streit v. Farmers Group, Inc. et al.*, Case No. BC434852 (Los Angeles County Superior Court) (co-lead counsel in consumer fraud action against Farmers Insurance; class certification and summary adjudication on liability granted in plaintiffs' favor in 2015; damages hearing pending); *Ackerman v. Zynga Inc.*, Case No. CGC-12-518829 (San Francisco Superior Court) (counsel for California class in consumer fraud action against Zynga; commended by Judge Munter for "absolutely outstanding" work on behalf of the class); *In re Credit/Debit Card Tying Cases*, J.C.C.P. No. 4335 (counsel in UCL action alleging anticompetitive conduct; UCL claims survived due to my briefing after antitrust claims dismissed; settled for \$30 million); *Levitte v. Google, Inc.*, Case No. 5:08-cv-03369-EJD (N.D. Cal.) (counsel in UCL action alleging consumer fraud; order denying class certification recently reversed by Ninth Circuit).

(2) Antitrust Class Actions: *In re Microcrystalline Cellulose Antitrust Litig.*, MDL No. 1402 (E.D. Pa.) (lead counsel for (direct) Food Purchasers Class; settled for \$50 million); *In re Fresh and Process Potatoes Antitrust Litig.*, MDL No. 2186 (D. Idaho) (executive committee for direct purchasers; settled for \$19.5 million); *In re Western States Wholesale Natural Gas Antitrust Litig.*, Case No. 2:03-cv-01431 (D. Nev.) (co-lead counsel firm for direct purchasers; settled for \$25.95 million); *In re Korean Air Lines Co., Ltd. Antitrust Litig.*, Master File No. CV 07-05107 SJO (C.D. Cal.) (co-lead counsel firm for indirect purchasers; settled for \$65 million); *Abid v. Grosvenor Bus Lines, Inc.*, Case No. CGC-03-424619 (San Francisco Superior Court) (lead counsel for plaintiffs; settled for \$3.1 million and injunctive relief); *3M Transparent Tape*



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Cases, J.C.C.P. No. 4338 (co-lead counsel for California indirect purchaser plaintiffs; settled for relief valued at \$42 million); and *In re Packaged Seafood Antitrust Litig.*, MDL No. 2670 (S.D. Cal.) (seeking appointment as co-lead counsel for putative class of indirect purchasers).

Judicial References. The following judges are familiar with my work in complex consumer fraud and antitrust class action litigation:

Hon. Ronald M. Sabraw (Ret.), JAMS
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Additionally, a letter of recommendation from Judge Sabraw is attached to my CV.

Willingness to Serve and Work Cooperatively With Co-Counsel. I am willing and able to serve on the Plaintiffs' Steering Committee, and if selected, I will commit the necessary personnel and resources. Ms. Rogers and I have a long history of cooperative and successful work with co-counsel, including in all of the cases cited above (except *Abid*, in which I served as sole lead counsel). We were "commend[ed]" by Judge Barbara A. Kronlund for our "fortitude" and for conducting ourselves "civilly" and "professionally" in representing the class in *Bluford v. Safeway Stores, Inc.*, Case No. CV014837 (San Joaquin County Superior Court) (co-lead counsel in wage and hour class action; settled for \$30 million). Ms. Rogers and I have worked closely on many cases with the attorneys of Hausfeld LLP, who have applied for a Lead Counsel position in this litigation, as well as with many of the other firms seeking leadership positions. We would welcome the opportunity to collaborate closely with them in this matter.

Other Considerations Supporting Appointment to Steering Committee. As noted in the JPML's transfer order, "California is the State with the most affected vehicles and dealers." California's consumer protection statutes, including the UCL and CLRA, are expected to be a central focus of the litigation. Since 2003, I have been the author of *The UCL Practitioner* (<http://www.uclpractitioner.com>), a web log on the UCL, CLRA, and class action practice. The site has long been used as a research tool by judges, judicial research attorneys, and practicing lawyers, and I am regularly quoted in the press as an expert on these subjects. If appointed to the Steering Committee, I will bring this expertise to bear in advancing the interests of the class.

Thank you for the opportunity to apply for a Steering Committee position and for considering my application.

Sincerely,

Kimberly A. Kralowec

Kimberly A. Kralowec

Enclosure